

Secure Care in Scotland: Cross border placements

Alison Gough, Secure Care National Advisor

What are cross border placements?

The term 'cross border placement' is used where a young person who is ordinarily resident and under the jurisdiction of one country within the UK is placed in secure care in a different country of the UK. Such placements are not new. Historically, small numbers of children from elsewhere in the UK have been placed each year in the five secure care centres in Scotland. However, since 2015, there has been a significant increase in the number of children and young people being placed from England in Scottish secure care.

Cross border placing is not unique to secure care and each year hundreds of children are placed cross border between the countries of the UK in health and care settings. It is not possible to provide figures, as there is no routine mechanism across the UK for collating information and reporting on this. However the practice was highlighted as a concern in the most recent [Concluding Observations report on the UK](#) by the United Nations Committee on the Rights of the Child, specifically in relation to young people being placed cross border in mental health facilities.

Exponential increase

The most recent published [Scottish Government figures \(2016-17\)](#) show that placements into secure care from outside Scotland accounted for 30 per cent of all placements of young people in secure care here that year. The number of children placed from Scottish local authority areas had fallen. This is in line with the overall continuing downward trend in the use of secure care by Scottish local authorities in recent years.

The Scottish Government commissioned CYCJ to undertake an '[independent, strategic, analytical and practice focused review](#)' of secure care in Scotland, which began in 2015, partly to explore what lay behind the reduction and varying use of secure care by Scottish authorities. The review led to a number of reports which set out the findings and recommendations of the Secure Care National Project, including some comment on cross border placements. [Research undertaken in 2016](#) with Chief Social Work Officers showed some of them were concerned about the impact of cross border placing on choice and availability for Scottish children. Since that research was completed, the number of cross border placements has again significantly increased as has the frequency of occasions when the secure care centres have been at full capacity with no places available.

Factors explaining the increase

This increased appetite for Scottish secure care from outside Scotland can partly be explained by UK Government figures, which show that there was a 21 per cent reduction in secure accommodation places available in England and Wales between 2010 and 2016

(National Statistic, DfE data, 2016). There were 254 places commissioned at secure services in England and Wales in 2016, down 34 per cent on the 390 places available ten years earlier.

The Munby Judgement

It was in this context of increasing referrals to Scottish secure care from the English Courts over 2015-16 that Sir James Munby issued a High Court Ruling in 2016, in which he concluded that orders made by the English courts placing a child in a secure care centre north of the border could not be enforced or recognised in Scotland. The ruling was made after Munby had considered the cases of two young people who, under the care of English Councils, had been placed in secure care centres in Scotland due to no places being available in England. In his [judgement](#) he reviewed relevant law and concluded that a judge in England could not make a secure accommodation order under section 25 of the Children Act 1989, if the child was going to be placed in a secure care setting in Scotland. This was because section 25 (and the then equivalent legislation in Wales, section 119 of the Social Services and Well-being (Wales) Act 2014) only allowed for looked-after children in England or Wales to be placed in secure accommodation in those two countries. He recommended urgent action and a review of the law.

Legislative Change

However, at that time the UK Parliament was considering the Bill which led to the Children and Social Work Act 2017; and in December 2016, the UK Children's Minister Edward Timpson tabled amendments to that, which would amend Section 25 of the Children Act 1989 and enable such cross border placements. The Scottish Government gave 'legislative consent' to these aspects of the Children and Social Work Bill. In the Legislative Consent Memorandum, which Deputy First Minister John Swinney lodged with the Scottish Parliament in 2016, the changes were described as necessary to "*deal with a gap in the law.*" The Memorandum states that allowing local authorities in England and Wales to continue to place children in Scottish secure accommodation "*provides valuable flexibility in the secure accommodation estate across the UK and is in the best interests of the children involved.*" The Scottish Government also outlined the financial implications of these changes, stating [one or more secure units north of the border could be forced to close without them.](#)

Strategic Implications as at September 2018

A data analysis project is due to report later in 2018. This was commissioned by the Scottish Government led [Secure Care Strategic Board](#), over summer 2018. It found that English local authorities have been the third highest user of Scottish secure care between 2012 and 2018, (behind Glasgow City Council and City of Edinburgh Council), having purchased 12 per cent of places used during that time frame. The 2017-18 Children's Social Work Statistics are not yet available, but it is anticipated that they will indicate that nearly half of the places accessed across the contracted secure care centres have been purchased by out of Scotland authorities.

The complexity of the situation cannot be underplayed. There are significant ethical issues and tensions in relation to children's fundamental rights and state and Corporate Parents' responsibilities to meet children's needs and ensure their safety and wellbeing and that of others.

There has been limited public debate about the issue, though some lawyers and children's rights organisations have commented. Some advance the argument that where there is such a lack of safe care provision in any part of the UK, cross border placements are required to provide sometimes lifesaving secure care for very vulnerable children who would otherwise not be kept safe. Others outline the breach of fundamental rights which occurs when children are placed in another country and the significant implications for safeguarding, governance and accountability.

w www.cycj.org.uk
e cycj@strath.ac.uk
🐦 @CYCJScotland